

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

27055

FILE: B-212780, B-212780.2,
B-212906.2

DATE: December 19, 1983

MATTER OF: Oregon Metallurgical Corporation;
RMI Company

DIGEST:

Protests filed in General Accounting Office (GAO) are dismissed where material issues protested are before a court of competent jurisdiction and the court has not indicated interest in a GAO decision.

Oregon Metallurgical Corporation (Ormet) and RMI Company (RMI) protest against the solicitation and multiple award of contracts under invitation for bids (IFB) No. GS0083-DxxC-0011, issued by the General Services Administration (GSA), for the acquisition of titanium for the National Defense Stockpile to be used during national emergency.

Ormet protests the failure to include a Buy American Act clause in the IFB.

RMI contends that GSA violated the applicable procurement regulations in awarding contracts while a protest was pending before this Office and challenges the urgency justification given for the award. RMI also argues that the foreign bids represent "dumping" under the Antidumping Act of 1921, 19 U.S.C. § 160 (1982), and that GSA should have calculated the duty to be added to the bids for evaluation purposes at higher levels than GSA applied. RMI contends that the IFB's specifications may have been inadequate to ensure the titanium procured from the foreign suppliers will be useable for key national defense applications. RMI also accuses the foreign suppliers of collusive, anticompetitive activities, and, finally, RMI concurs with Ormet that the Buy American Act clauses should have been applied to this procurement.

We dismiss the protests.

On November 3, 1983, RMI filed suit against the United States in the United States District Court for the District of Columbia (Civil Action No. 83-3293). The bases for the suit are substantially the same as those presented to our Office in the protest. On November 30, 1983, the court held

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a hearing on RMI's motion for preliminary injunction and for the court to consider whether an opinion from the General Accounting Office (GAO) would be requested. The court denied RMI's motion for a preliminary injunction and declined to issue an order for an opinion from GAO or otherwise express an interest in a GAO opinion.

It is the policy of our Office not to decide protests where the material issues are pending before a court of competent jurisdiction unless the court requests, expects or otherwise expresses an interest in our decision. 4 C.F.R. § 21.10 (1983). This policy also applies to protesters who raise the same issue then before a court, whether or not the protesters are a party to the lawsuit. Sea-Land Service, Inc.--Reconsideration, B-208690.3, April 13, 1983, 83-1 CPD 393.

We dismiss the protests.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel